U. S. Supreme Court
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56TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 509.

THE INSULAR CASES,

COMPRISING

THE RECORDS, BRIEFS, AND ARGUMENTS OF COUNSEL IN THE INSULAR CASES OF THE OCTOBER TERM, 1900, IN THE SUPREME COURT OF THE UNITED STATES, INCLUDING THE APPENDIXES THERETO.

COMPILED AND PUBLISHED PURSUANT TO H. R. CON. RES. No. 71,
FIFTY-SIXTH CONGRESS, SECOND SESSION,

BY

ALBERT H. HOWE,
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1901.

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Fifty-sixth Congress, second session.

CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES,
February 9, 1901.

Resolved by the House of Representatives (the Senate concurring), That there be printed and bound, under the direction of the Joint Committee on Printing, 12,000 copies of the records, briefs, and arguments of counsel in the following cases of the October term, 1900, in the Supreme Court of the United States, including the appendices thereto, 7,500 copies for the use of the House of Representatives, 3,500 copies for the use of the Senate, 500 copies for distribution by the Department of Justice, and 500 copies for distribution by the clerk of the Supreme Court of the United States:

Elias S. A. De Lima and others *v.* George R. Bidwell, being case numbered 456; Samuel B. Downes and others *v.* George R. Bidwell, being case numbered 507; Henry W. Dooley and others *v.* The United States, being cases numbered 501 and 502; Carlos Armstrong *v.* The United States, being case numbered 509; George W. Crossman and others *v.* The United States, being case numbered 515; Christian Huus *v.* The New York and Porto Rico Steamship Company, being case numbered 514; John H. Goetze *v.* The United States, being case numbered 340, and Fourteen Diamond Rings, Emil J. Pepke, claimant, *v.* The United States, being case numbered 419.

Attest:

A. MCDOWELL, *Clerk.*

IN THE SENATE OF THE UNITED STATES,
February 15, 1901.

Resolved, That the Senate agrees to the foregoing concurrent resolution of the House of Representatives.

Attest:

CHARLES G. BENNETT, *Secretary.*

ERRATA.

Page 101, above "*Cross* v. *Harrison*," insert 7.

Page 127, in second line from bottom of page, at end of line, "Am." should read Ann.

Page 250, in second citation, "Leitsdorfer" should read Leitensdorfer.

Page 524, last citation, "*Geoffrey*" should read *Geofroy*.

Page 535, in citation near center of page, "*Leitendorfer*" should read *Leitensdorfer*.

Page 536, in third citation, "*Leitendorfer*" should read *Leitensdorfer*.

Page 542, in citation at end of third paragraph from bottom, "*Geoffrey*" should read *Geofroy*.

Page 555, in second paragraph from bottom, in citation, "*Ingles* v. *The Sailor's Snug Harbor*" should read *Inglis* v. *The Sailor's Snug Harbor*.

Page 564, in citation near center of page, "*Inglas*" should read *Inglis*.

Page 695, in fourth paragraph from bottom, "*Geoffrey*" should read *Geofroy*.

Page 841, in second paragraph, the citation "*Brown* vs. *Houston*, 104 U. S." should read *Brown* vs. *Houston*, 114 U. S.

Page 995, in third paragraph, in citation, "*Lack and Cargo*" should read *Lark and Cargo*.

Page 1049, center line "VII" should read VIII.

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tection and not for the benefit or protection of outside territory belonging to the nation; in the latter sense duties on imports from these islands are uniform throughout the United States, because they are uniformly imposed at every port in the United States, so that there is no preference given to the ports of one State over those of another, nor is any inequality between the several States created. 329

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I. As the act in question purports to regulate interstate and foreign commerce, which is exclusively a subject of national legislation, by imposing duties thereon, it is plainly an attempted exercise of the powers conferred on Congress as a National Government, viz, the power to regulate commerce conferred by clause 3, section 8, Article I, of the Constitution, and the power to levy duties, imposts, and excises, conferred by clause 1 of the same section; and as such its tariff regulations are unconstitutional and void because the duties levied and collected under them are not uniform throughout the United States 861

II. The act, so far as its tariff regulations on commerce between Porto Rico and the States are concerned, can not be sustained as an exercise of the power of Congress to govern the Territories. The tax is not a local tax for local purposes, but a tax laid under the eighth section of the first article of the Constitution 863

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 340.

JOHN H. GOETZE, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF JOHN H. GOETZE & CO., APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JULY 9, 1900.

SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

No. 340.

JOHN H. GOETZE, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF JOHN H. GOETZE & CO., APPELLANT, VS. THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

At a stated term of the United States circuit court for the southern district of New York, held in the United States court and post-office building, in the city of New York, on the second day of March, 1900.

Present: Hon. E. Henry Lacombe, circuit judge.

JOHN H. GOETZE & Co.
vs.
THE UNITED STATES.

Upon reading and filing the annexed petition and upon motion of Comstock & Brown, attorneys for the petitioners, it is—

Ordered that the board of United States general appraisers, sitting at the port of New York, return to this court the record and the evidence taken by them in each of the matters set forth and referred to in the annexed Schedule A, which is hereby made a part hereof, together with a certified statement of the facts involved and their decisions thereon.

Dated New York, March 2, 1900.

E. HENRY LACOMBE,
United States Circuit Judge.

United States Circuit Court, Southern District of New York.

JOHN H. GOETZE & Co.
vs.
THE UNITED STATES.

To the honorable the United States circuit court for the southern district of New York:

Your petitioners, having complied with the statute in such case made and provided, and being dissatisfied with the decisions of the board of United States general appraisers made within thirty days immediately preceding the date hereof in each of the matters set forth and referred to in the annexed Schedule A, which is hereby made a

part hereof, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, respectfully pray that the said circuit court review the questions of law and fact involved in said decisions, and for that purpose pray that an order be entered requiring the said board of appraisers to return to said circuit court the record and evidence taken by them, together with a certified statement of the facts involved in each of the said matters and their decisions thereon; and your petitioners also pray for such other or further orders or relief in the premises as the statutes provide or to the court shall seem just.

The particulars of the errors of law and fact involved in said decisions of said board of appraisers, of which your petitioners complain, are set forth in the annexed Schedule B, which is hereby referred to and made a part hereof.

Dated New York, March 2, 1900.

JOHN H. GOETZE & CO., *Petitioners*,
By COMSTOCK & BROWN,
Attorneys, 56 *Pine Street*, *New York City*.

SCHEDULE A.

The following are the importations and entries covered by this proceeding, with the dates thereof, and with such other data as are convenient for purposes of identification:

Entry No.	Vessel.	Entered.	Protest No.	Decision.
89683	Catania.	June 6, '99.	54168 F/10970	Feb. 14, 1900.

SCHEDULE B.

The board of United States general appraisers has confirmed the action of the collector of the port in assessing and exacting duty at 35 cents per pound or other rates on certain tobacco or other merchandise, thereby making errors of law and fact by failing to find or finding the contrary of the following propositions:

1. Said merchandise having been shipped from Puerto Rico on or about May 27, 1899, and having arrived at the port of New York on or about June 6, 1899, was not subject to any duty whatever, but was exempt from duty.

2. At the times mentioned the island of Puerto Rico was not a foreign country, and it was in possession of and a part of the United States, by reason of a treaty of peace between the United States and Spain, of which ratifications were exchanged on or about April 11, 1899.

3. No statute of the United States warrants the exaction of any duty on said merchandise. The tariff act of July 24, 1897 (30 Stat. at L., 151), in its enacting clause purports to levy duties only on merchandise imported from foreign countries, and Puerto Rico was not a foreign country at the period in question.

4. The exaction of any duty on said merchandise and any law which should purport to warrant said exaction are unconstitutional and void; they are repugnant to article 1, section 9, clauses 5 and 6, of the Constitution of the United States, and particularly to the provision in

article 1, section 8, and clause 1 of said Constitution, which provides that "all duties, imposts, and excises shall be uniform throughout the United States."

The decision of the collector herein should have been reversed.

6. The protest herein should have been sustained.

(Endorsed:) No. 3076. United States circuit court, southern district of New York. John H. Goetze & Co. *vs.* The United States. Petition and order. Comstock & Brown, attorneys for petitioners, 56 Pine St., New York. U. S. circuit court. Filed Mar. 2, 1900. John A. Shields, clerk.

Know all men by these presents that I, Everit Brown, am held and firmly bound unto the United States of America in the sum of twenty-five dollars, to be paid to the United States of America; for the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with my seal and dated the 2nd day of March, in the year of our Lord nineteen hundred.

Whereas John H. Goetze & Co. have applied or are about to apply to the circuit court of the United States for the southern district of New York for a review of the questions of law and fact involved in certain decisions of the board of United States general appraisers, made upon the entry of certain merchandise imported by them, per Catania, June 6, 1899:

Now, therefore, the condition of this obligation is such that if the above-named John H. Goetze & Co. shall prosecute said proceedings with effect and pay all damages and costs which shall be awarded against them therein if they shall fail to make said proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

EVERIT BROWN. [SEAL.]

Sealed and delivered and taken and acknowledged this 2nd day of March, 1900, before me—

JOHN FRANCIS STRAUSS,
[SEAL.] *Notary Public, N. Y. County.*

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

Everit Brown, being duly sworn, deposes and says that he resides in the southern district of New York, in the city of New York, and that he is worth the sum of fifty dollars over and above all his just debts and liabilities.

EVERIT BROWN.

Sworn to this second day of March, 1900, before me—

JOHN FRANCIS STRAUSS,
[SEAL.] *Notary Public, N. Y. County.*

This bond is approved as to form and amount and sufficiency of surety.

Dated New York, March 2, 1900.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) 3076. United States circuit court, southern district of New York. John H. Goetze & Co. *vs.* The United States. Catania,

June 6, 1899. Bond for costs on application for review. Comstock & Brown, attorneys for petitioners, 56 Pine street, New York city. U. S. circuit court. Filed Mar. 2, 1900. John A. Shields, clerk.

In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Application of JOHN H. GOETZE & Co. for a Review of the Decision of the Board of U. S. General Appraisers, as to the Rate, etc., of Duty on Certain Merchandise Imported per Catania June 5, 1899. Suit No. 3076.

Return of the board of United States general appraisers to the order of Hon. E. Henry Lacombe, circuit judge, dated New York, Mar. 15, 1900.

The board of United States general appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter and of the facts involved therein as ascertained by them:

They state that a letter, hereto annexed as "Exhibit A," was received from the collector of customs at New York, submitting, under the provisions of section 14 of the act of June 10, 1890, the protest, marked "Exhibit B," and described as follows:

Colls. No.	Board No.	Protestants.	Vessel.	Date of entry.
10970	54168-F.	John H. Goetze & Co.	Catania.	June 5, '99.

A stipulation, signed by the respective counsels for the Government and for the importers, dated November 1st, 1899, and setting forth the facts in the case (which were also found by the board to be as stated) is annexed as "Exhibit C."

On February 11th, 1900, the board rendered its decision upon said protest. A copy of the opinion, known as G. A. 4658, is annexed as "Exhibit D:"

EXHIBIT A.

OFFICE OF THE COLLECTOR OF CUSTOMS,
Port of New York, August 7, 1899.

Board of U. S. general appraisers at the port of New York.

GENTLEMEN: I submit the protest of Messrs. John H. Goetze & Company, No. 10970, against the assessment of duty as made by this office on certain products of Puerto Rico imported by them in the "Catania," June 5, 1899.

As to the claim in the protest that the goods were imported from Puerto Rico, and are therefore entitled to free entry, I have to state that section 3 of article IV of the Constitution of the United States provides that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States.

The only way that Congress can give effect to this provision of the Constitution is by legislation. It would be absurd to assume that

want of such legislation would secure to such territory all the rights, privileges, and immunities that could be obtained by legislation. Therefore, in the absence of legislation, the assessment as made is affirmed.

Note principle enunciated in S. 19783 as to the Hawaiian islands.

Respectfully yours,

J. J. COUCH,
Special Deputy Collector.

(3 enclosures.)

(Endorsed:) Custom-house, collector's office, New York, N. Y., Aug. 7, 1899. Geo. R. Bidwell, collector. Subject, protest # 10970 of Jno. H. Goetze & Co. Received by board of U. S. general appraisers Aug. 9, 1899.

EXHIBIT B.

NEW YORK, *Jul. 12, 1899.*

Hon. collector of customs, port of New York.

SIR: Notice of dissatisfaction is hereby given with and protest is hereby made against your ascertainment and liquidation of duties and your decision assessing duty on the entries below named. The reasons for objection are as follows:

You have liquidated and assessed duty on the goods covered by said entries. No duties at all attach to the same, but they are exempt from duty. They were not imported from any foreign country, but from the island of Puerto Rico, which is in the possession of and part of the United States. See sec. 1, tariff act of July 24, 1897, and Constitution of the United States, art. 1, sec. 8, clause 1, and sec. 9, clauses 5 and 6, and treaty between the United States and Spain, of which ratifications were exchanged on or about April 11, 1899.

The offer is hereby made to furnish evidence to the board of United States general appraisers, on reasonable notice from them, of the facts involved and in support of the contentions herein.

The excess is paid under compulsion to obtain and retain possession of the merchandise or articles, and you and the Government are held liable for the same, and a demand for the repayment thereof and a readjustment or liquidation of the entries in accordance with the above claims is hereby made. The marks and numbers below given are given under duress and without prejudice:

Entry No.	Vessel.	Entered.	Bond No.	Liquidated.	Marks and Nos.
89683	Catania	June 6, '99	53190	July 10, '99	G. R. & C. 1/50, And various as per entries and invoices.

Respectfully,

JOHN H. GOETZE & CO.,
By COMSTOCK & BROWN, *Attorneys,*
Attorneys and Counsellors at Law,
56 Pine Street, New York City.

54168 F.

(Endorsed:) 10970. John H. Goetze & Co. Catania. Admin. (Porto Rico products.) Vessel, Catania. Entry, 1899, June 5. Liq-ed, 1899, Jul. 10. Protested, 1899, Jul. 12. Custom-house, New York, Jul. 12, 1899, received.

EXHIBIT C.

Before the board of United States general appraisers.

In the Matter of Protest 54168 F of JOHN H. GOETZE & Co.

It is hereby stipulated and agreed by and between counsel for the Treasury Department before the board of U. S. general appraisers, in behalf of the United States, and counsel for the merchants above named that the merchandise covered by the entry herein consists of one hundred (100) bales of leaf tobacco; that the same is filler tobacco, not specially provided for otherwise in the present tariff act, is unstemmed, and, if dutiable at all, is dutiable at 35 cents per pound under par. 213, tariff act of July 24, 1897; that said merchandise was shipped from the port of Arecibe, on the island of Puerto Rico, on or about the 27th day of May, 1899, and arrived at the port of New York on or about the 6th day of June, 1899; that in order to obtain possession of their goods the merchants made entry of said merchandise, and that the collector liquidated and assessed duties, at 35 cents per pound, in the total sum of $3,699.50, upon said merchandise.

Dated New York, November 1st, 1899.

W. J. GIBSON,
Counsel for Treasury Department Before the Board of U. S. General Appraisers.

COMSTOCK & BROWN,
Counsel for John H. Goetze & Co.

EXHIBIT "D."

Decisions by the Board of General Appraisers.

(22018—G. A. 4658.)

PORTO RICO A FOREIGN COUNTRY FOR TARIFF PURPOSES.

(1.) Porto Rico—Facts judicially recognized.—The board of general appraisers, sitting as a board of classification, will take judicial cognizance of all laws, executive proclamations, and public documents, showing the political and fiscal relations of this country to the Kingdom of Spain and to the island of Porto Rico.

(2.) Treaties—When supreme law of the land.—The treaty at Paris, made December 10, 1898, by which Porto Rico was ceded by Spain to the United States (30 Stat., 1754), became the "supreme law of the land," within the meaning of article VI, section 2, of the United States Constitution, as an act of Congress is, only so far as, not being merely executory, it prescribes a rule by which the rights of the private citizen or subject may be determined and enforced in a court of justice. In other respects it addresses itself to the political and not to the judicial department of the Government.

(3.) Cession of Porto Rico—Tariff relations.—The cession of Porto Rico to the United States did not *ipso facto* bring that island within the operation of the general tariff laws of this country, without special congressional legislation on this subject.

(4.) Authority of President to make war tariffs.—The President of the United States in his capacity as commander-in-chief of the United States armies, was fully authorized to establish a military government and a war tariff in said Territory, which was acquired from Spain by conquest, the title being only confirmed and perfected by the terms of the subsequent cession and treaty of peace.

(5.) War tariff superseded only by Congress.—The only mode by which this provisional military government and its existing war tariff can be superseded or terminated is by affirmative legislation on the part of Congress.

(6.) Porto Rico still a foreign country for tariff purposes.—Until Congress, by special legislation, extends the general or other tariff laws over such newly acquired territory, and establishes therein collection districts, with ports of entry and clearance for vessels, the island, *for tariff purposes*, remains a "foreign country," and its ports are not domestic ports, however the island may be viewed in its international relations.

(7.) Effect of action by Congress—*Quere.*—Whether Congress, under its constitutional power to regulate commerce, or "to make all needful rules and regulations respecting the Territory or other property belonging to the United States" (art. IV, sec. 3, U. S. Const.), can levy any duties on importations of merchandise from territory acquired by conquest or treaty, or can make a separate tariff law for such territory with rates not uniform with those levied in the general tariff law, *quere.*

Before the U. S. general appraisers at New York, February 14, 1900.

In the Matter of the Protests 54053*f*-9049 and 54168*f*-10970 of MOSLE BROTHERS and JOHN H. GOETZE & Co. against the Decision of the Collector of Customs at New York, N. Y., as to the Rate and Amount of Duties Chargeable on Certain Merchandise Imported per *Myrtledene* and *Catania* and Entered April 27 and June 5, 1899.

Opinion by Somerville, General Appraiser.

There is no controversy about the facts of these cases, the main question presented being one purely of law. The importations in question consist of certain merchandise shipped from the island of Porto Rico and brought into the port of New York, at dates subsequent to the exchange of ratifications between the United States and the government of Spain of the recent treaty of Paris, by which treaty the island of Porto Rico was ceded to the United States (30 Stat., 1754–1762). Duty was assessed upon the goods by the collector at the port of New York, under the appropriate provisions of the Dingley tariff act of July 24, 1897. The contention of the importers is that, as the enacting clause of this tariff act (section 1) refers only to "articles imported from *foreign* countries," the importations are not subject to duty, for the reason that the island of Porto Rico was not,

at the time of the arrival of the goods at the port of New York, a foreign country, but a part of the United States, to which it was ceded.

The board is authorized to take judicial cognizance of all laws, executive proclamations, and public documents, showing the political relations of this country to the Kingdom of Spain, and to the island of Porto Rico, which was formerly one of the colonies of that Kingdom. These facts need no affirmative proof (Jones *v.* United States, 137 U. S., 202; 11 Sup. Ct. Rep., 80).

War was declared between the United States of America and the Kingdom of Spain April 25, 1898 (30 Stat., 364). Military possession was taken of the island by the Army of the United States, and the acquisition of the territory was confirmed by a treaty of peace between the two belligerent governments December 10, 1898. This treaty was ratified by the Senate February 6, 1899, and the ratifications of the two governments were exchanged April 11, 1899, all of which will appear from the proclamation of the President, dated April 11, 1899 (30 Stat., 1754).

Under article II of this treaty, "Spain cedes to the United States the island of Porto Rico" and other islands under Spanish sovereignty. Article IX provides that "the civil rights and political status of the native inhabitants of the territory hereby ceded shall be determined by Congress."

The question presented is whether the cession of the island of Porto Rico, under the terms of this treaty, makes it a part of the United States without further legislation by Congress, in the sense that it has ceased to be a foreign country for *tariff purposes*, within the meaning of section 1 of the present tariff act.

The Constitution of the United States (article VI, sec. 2) provides that "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." This provision has been frequently construed by the Supreme Court of the United States; and it has been held by that court that not all treaties are construed to fall within its scope, but only such as, not being *executory* in their character, operate within themselves, without the aid of legislative action or provision. When the terms of a treaty import a contract between two nations, by which one or both the contracting parties agree to perform a particular act, it is held accordingly that the treaty addresses itself to the political, not to the judicial, department, and that the legislature must execute the contract before it can become a rule of the court (Foster *v.* Neilson, 2 Pet., 253). The rule governing treaties under our Constitution is thus stated by Chief Justice Fuller (*In re* Cooper, 143 U. S., 472, 502):

A treaty, then, is a law of the land, as an act of Congress is, whenever its provisions prescribe a rule by which the rights of the private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it, as it would to a statute.

It is manifest that the treaty of Paris contains no provision which regulates the tariff relations of the island of Porto Rico with the United States, or which operates to put in force any particular rates of duty on imported merchandise. It would seem to follow that all such questions, including rights arising under navigation laws, were left, in the language of the treaty itself, "to be determined by the

Congress." (See opinion of Attorney-General Griggs, T. D. 19783, July 30, 1898.)

It is now a settled proposition, no longer subject to dispute, that the General Government of the United States possesses the right to acquire territory, either by conquest or by treaty. While it has been a subject of controversy as to what clause of the Constitution this power is strictly referable, the existence of the power has been settled by unanimous decisions of the courts (2 Story on the Constitution, sec. 1324; Am. Ins. Co. *v.* Canter, 1 Pet., 511; Romney *v.* United States, 136 U. S., 1).

It is a matter of public history that the island of Porto Rico, prior to the treaty of peace with Spain, was rescued from the sovereignty of that country by conquest, and was occupied by the Army of the United States, and that the title thus acquired was only confirmed and perfected by the provisions of the treaty itself. We know, further, that the President, in his capacity as commander-in-chief of the United States armies, and in exercise of the war power, has established a so-called war tariff in that island, with a schedule of rates of duty on imported merchandise, separate and distinct from those levied by the Dingley tariff act of 1897. This tariff depends for its validity on military authority, and not on any act of Congress. The constitutional right of the President to establish such a war tariff in a conquered territory cannot at this late day be questioned; it was fully sustained by the Supreme Court, in Fleming *v.* Page (9 How., 603), decided in 1850, and in Cross *v.* Harrison (16 *id.*, 164), decided in 1853. It was settled by these decisions that a "war tariff," imposing rates of duty either different from or the same as those levied by Congress in a general law, on merchandise imported into the United States, may be established by the President of the United States in his military capacity, and enforced in territory obtained by conquest and occupied by the armies of the United States. And this may be done through the instrumentality either of military officers or of civil appointees. We shall make further reference to other points covered by these two decisions, which are relied upon both by the counsel for the Government and the counsel for the importers to retain their respective contentions.

The authority of the President to establish the war tariff in Porto Rico being assumed to be lawful, as we think it is, a further inquiry is whether this tariff act ceased or terminated *ipso facto* by reason simply of the cession of the island to the United States April 11, 1899.

We have seen that there is nothing in the treaty itself relating to or regulating tariff rates or duties, such as are sometimes found in similar treaties acquiring territory, as in the case of Louisiana in 1803 (2 L. U. S., 251); also, in the joint resolution providing for the annexation of Hawaii in 1898 (30 Stat., 750). The only mode by which such a military government, with its system of tariff and other laws, can be terminated is by action of Congress. This question is discussed to some extent in Leitensdorfer *v.* Webb (20 How., 176). As appears from the facts of that case, upon the conquest of Mexico by the arms of the United States, in 1846, General Kearney, holding possession of the territory now comprising New Mexico, by virtue of the power of conquest and occupancy, and under the authority of the President, ordained a provisional or temporary government for the acquired country, and promulgated a code of laws

called the Kearney Code. The treaty of peace between the United States and Mexico, embracing the cession of this territory, was signed February 3, 1848. It was contended that, "whatever may have been the rights of the occupying conqueror *as such*, these were all terminated by the termination of the belligerent attitude of the parties, and that with the close of the contest every institution which had been overthrown or suspended would be revived and re-established." This was answered by the court, per Justice Daniels:

The fallacy of this pretension is exposed by the fact that the territory was never relinquished by the conqueror, nor restored to its original condition of allegiance, but was retained by the occupant until possession was matured into absolute permanent dominion and sovereignty; and this, too, under the settled purpose of the United States never to relinquish the possession acquired by arms. We conclude, therefore, that the ordinances and institutions of the provisional government would be revoked or modified by the United States alone, either by *direct legislation on the part of Congress* or by that of the territorial government in the exercise of powers delegated by Congress.

In other words, it was held that the Kearney Code remained in force until the act of Congress of September 9, 1850, was approved, establishing a territorial government for the Territory of New Mexico, and was repealed then only so far as its provisions conflicted with the act organizing the Territory, or with the laws enacted by the territorial legislature.

This conclusion is in harmony with the rule that "according to the established principles of the laws of nations, the laws of a conquered or ceded country remain in force till altered by the new sovereign" (Mitchell *v.* United States, 9 Pet., 711); or, as stated by Chancellor Kent (1 Com., 178, n.), "the laws, usages, and municipal regulations in force at the time of the conquest or cession remain in force until altered by the new sovereign." The rule was applied to the Republic of Texas, when certain existing laws were held to remain in force until her admission into the United States as a State, which was effected by a joint resolution of Congress (Calkin *v.* Cocke, 14 How., 227).

The same result would seem to follow as a corollary, from the power conferred on Congress by the Constitution, "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States" (article IV, section 3).

Speaking of the status of conquered territory and the power of Congress to make rules and regulations for its government, the following language was used by Judge Story (2 Story on the Constitution, 5th ed., sec. 1324):

The territory does not, when so acquired, become entitled to self-government, and it is not subject to the jurisdiction of any State. It must consequently be under the dominion and jurisdiction of the Union, or it would be without any government at all. In cases of conquest the usage of the world is, if a nation is not wholly subdued, to consider the conquered territory as merely held by military occupation until its fate shall be determined by a treaty of peace; but during this intermediate time it is exclusively subject to the government of the conqueror. In cases of confirmation or cession by treaty, the acquisition becomes confirmed and stable, and the ceded territory

becomes a part of the nation to which it is annexed, either on terms stipulated by the treaty, or on such terms as its *new master may impose.*

And, again, the same author observes (*ib.*, sec. 1328):

The power of Congress over the public territory is clearly exclusive and universal, and their legislation is subject to no control, but is absolute and unlimited, unless so far as it is affected by stipulations in the cessions, or by the ordinance of 1787, under which any part of it has been settled.

It has been held by the United States circuit court of appeals, in Endleman *v.* United States (86 Fed. Rep., 456; 30 C. C. A., 186), that Congress possessed full legislative power over the Territories, unrestricted by the limitations of the Constitution, and on this principle that court sustained the act of Congress of May 17, 1884, prohibiting the sale of liquors in Alaska, under certain regulations set out in the act itself, and which were claimed to be unconstitutional. It was contended that Congress could not impose restrictions of this character upon trade and commerce, and that if it possessed the power to regulate the sale of intoxicating liquors within the Territory, as a police regulation, it could only enact laws applicable to all the Territories alike. The following language was used by the court:

The answer to these and other like objections urged in the brief of counsel for defendant is found in the now well-established doctrine that the Territories of the United States are entirely subject to the legislative authority of Congress. They are not organized under the Constitution, nor subject to its complex distribution of the powers of government as the organic law, but are the creation exclusively of the legislative department, and subject to its supervision and control. * * * The United States, having rightfully acquired the territory, and being the only government which can impose laws upon them, has the entire dominion and sovereignty, national and municipal, Federal and State. Under this full and comprehensive authority, Congress has unquestionably the power to exclude intoxicating liquors from any or all of its Territories, or limit their sale under such regulations as it may prescribe. It may legislate in accordance with the special needs of each locality, and vary its regulations to meet the conditions and circumstances of the people. Whether the subject elsewhere would be a matter of local police regulation, or within State control under some other power, it is immaterial to consider. In a Territory all the functions of government are within the legislative jurisdiction of Congress, and may be exercised through a local government, or directly by such legislation as we have now under consideration.

It is not necessary that we should indorse the foregoing decision, as it is not required for us, under the facts of this case, to pass upon its accuracy in stating the principle discussed. Nor need we either affirm or question the principle asserted by Judge Cooley, that "the Constitution was made for *the States*, not for the Territories," (Cooley on the Constitution, 36). There are many adjudged cases, on the contrary, which hold that Congress cannot legislate for the Territories in a manner violative of certain prohibitions of the Constitution; for example, that Congress cannot pass a law for the government of a Territory which will prohibit the free exercise of religion, or abrogating the freedom of speech or of the press, nor abolishing the right of trial by jury, nor compel one to be a witness against

himself in a criminal proceeding, nor pass an *ex post facto* law, nor establish slavery except as a punishment for crime, nor violate other fundamental limitations of the Constitution designed to protect the life, liberty, or property of the citizen. (Reynolds *v.* United States, 98 U. S., 145; Cummings *v.* Missouri, 4 Wall., 237; *Ex parte* Garland, *ib.*, 333; *Ex parte* Milligan, *ib.*, 3; Webster *v.* Reid, 11 How., 437; Dred Scott *v.* Sanford, 19 *id.*, 393; Am. Pub. Co. *v.* Fisher, 166 U. S., 464; Romney *v.* United States, 136 *id.*, 1; Murphy *v.* Ramsey, 114 *id.*, 15, 44; Thompson *v.* Utah, 170 *id.*, 343; Callan *v.* Wilson, 120 *id.*, 547.)

Mr. Justice Bradley, in reviewing the authorities on this subject, in Mormon Church *v.* United States (136 U. S., 1, 44, *supra*) after asserting that "the power of Congress over the Territories of the United States is general and plenary, arising from and incidental to the right of acquiring the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting territory or other property belonging to the United States," observes:

Doubtless Congress, in legislating for the Territories, would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments; but these limitations would exist rather by inference and the general spirit of the Constitution from which Congress derives all its powers than by any express and direct application of its provisions.

Congress, however, has taken no action to organize a territorial government in Porto Rico; nor has it passed any rules or regulations whatever for its government. It has not undertaken by legislative action to supersede the war tariff or other ordinances or laws promulgated by the military authorities in that island, all of which, we must assume, were necessary and proper for the government of its people in the transition state of the new territory from the status of military occupation to that of civil rule by Congress, under the Constitution. These laws, as we have said, did not cease *eo instanti*, at the time of the treaty of peace, nor did the military government established on the island terminate. The courts cannot say that Congress has abused its discretion by nonaction, nor can they undertake to fix any period of time within which the rights of that body, under the Constitution, shall be exercised for the government of the territory, which must be deemed to be still in a condition of political pupilage.

The case of Fleming *v.* Page (9 How., 603), as we have said, has a strong bearing upon the question under consideration. This case arose from the assessment of duties by the collector of customs at the port of Philadelphia on goods brought from Tampico, Mexico, while that place was in the military possession of the Army of the United States, the contention of the importers being that the articles had not been imported from a "foreign country," within the meaning of the tariff act of July 30, 1846. But the court held that when Mexico was conquered by the armies of the United States, in 1846, it did not thereby become a part of the Union, but was a foreign country within the meaning of said tariff act, which levied duties on goods imported into the United States from foreign countries. Among other reasons given by Chief Justice Taney, who wrote the opinion of the court in that case, were the following (p. 616):

Again, there was no act of Congress establishing a custom-house at Tampico, nor authorizing the appointment of a collector; and consequently there was no officer of the United States authorized by law to grant the clearance and authenticate the coasting manifest of the cargo, in the manner directed by law, where the voyage is from one port of the United States to another. The person who acted in the character of collector in this instance acted as such under the authority of the military commander, and in obedience to his orders; and the duties he exacted and the regulations he adopted were not those prescribed by law, but by the President in his character of Commander-in-chief. * * * The permit and coasting manifest granted by an officer thus appointed and thus controlled by military authority could not be recognized in any port of the United States as the documents required by the act of Congress when the vessel is engaged in the coasting trade, nor could they exempt the cargo from the payment of duties.

We quote further from the opinion of the court, as follows:

This construction of the revenue laws has been uniformly given by the administrative department of the Government in every case that has come before it. And it has, indeed, been given in cases where there appears to have been stronger ground for regarding the place of shipment as a domestic port; for after Florida had been ceded to the United States, and the forces of the United States had taken possession of Pensacola, it was decided by the Treasury Department that goods imported from Pensacola before an act of Congress was passed erecting it into a collection district, and authorizing the appointment of a collector, were liable to duty; that is, that although Florida had, by cession, actually become a part of the United States, and was in our possession, yet, under our revenue laws, its ports must be regarded as foreign until they were established as domestic by act of Congress; and it appears that this decision was sanctioned at the time by the Attorney General of the United States, the law officer of the Government. And although not so directly applicable to the case before us, yet the decisions of the Treasury Department in relation to Amelia island and certain ports in Louisiana, after that province had been ceded to the United States, were both made upon the same grounds. And in the latter case, after a custom-house had been established by law at New Orleans, the collector at that place was instructed to regard as foreign ports Baton Rouge and other settlements still in the possession of Spain, whether on the Mississippi, Iberville, or the seacoast. The department in no instance that we are aware of, since the establishment of the Government, has ever recognized a place in a newly acquired country as a domestic port, from which the coasting trade might be carried on, unless it had been previously made so by act of Congress.

The principle thus adopted and acted upon by the Executive Department of the Government has been sanctioned by the decisions in this court and the circuit courts whenever the question came before them. We do not propose to comment upon the different cases cited in the argument. It is sufficient to say that there is no discrepancy between them. And all of them, so far as they apply, maintain that under our revenue laws every port is regarded as a foreign one, unless the custom-house from which the vessel clears is within a collection district established by act of Congress, and the

officers granting the clearance exercise their functions under the authority and control of the laws of the United States.

The case of Cross *v.* Harrison (16 How., 164) involved the question of the legality of continuing, after peace, the government which had been established in Upper California during the war with Mexico. The decision was rendered by a court composed of seven of the nine judges that sat in the case of Fleming *v.* Page (*supra*), and was promulgated only about three years later than that decision, to which the attention of the court was repeatedly cited in the briefs of counsel.

The President of the United States had authorized the military and naval commanders, in the exercise of the belligerent rights of the conqueror, to establish a civil and military government for the conquered territory, with power to impose duties on imports and tonnage, for the support of such government. A "war tariff" was promulgated under this authority, and one Harrison was appointed collector of customs, and proceeded to collect certain duties on foreign merchandise imported into San Francisco, in obedience to the law and instructions of the government existing in the conquered territory. On February 3, 1848, a treaty of peace was made between the United States and Mexico. On March 3, 1849, an act of Congress was passed, making San Francisco one of the regular collection districts of the United States, and on November 13, 1849, one Collier entered upon the duties of his office as collector, having been duly appointed by the President.

The duties in question were collected by Harrison, and comprised two classes:

(1.) Those that accrued between February 3, 1848, the day on which the treaty of peace and the cession of California to the United States was signed, and on March 3, 1849, the day on which the act of Congress was approved, constituting San Francisco a port of entry.

(2.) Those that accrued between March, 1849 (when the said act of Congress was passed, making California a collection district), and November 13, 1849, when the new collector (Collier) appointed under the act arrived at San Francisco and entered on the duties of his office.

These duties had been paid under two separate tariff acts—

(1.) Under the special "war tariff" which had been established by the military, under the authority of the President, and which prevailed "until some time in the fall of 1848."

(2.) At the rates prescribed by the tariff act of 1846, which had been enacted by Congress, but *had been authorized by Colonel Mason, the military governor of California*, on his receiving information of the exchange of ratifications of the treaty with Mexico. "This was done with the assent of the Executive of the United States, or without any interference to prevent it."

It was said by Mr. Justice Wayne, speaking for the court, in reference to the substitution of the rates of the tariff act of 1846 for those of the war tariff:

We cannot doubt that the action of the military governor of California was recognized as allowable and lawful by Mr. Polk and his cabinet. We think it was a rightful and correct recognition, under all the circumstances, and when we say rightful we mean that it was constitutional, although Congress had not passed an act to extend the collection of tonnage and import duties to the ports of California.

It was held by the court that no recovery would lie by the appellant

Cross against Harrison for the duties levied under the war tariff, or under the tariff act of 1846. As to the war tariff, it was said:

No one can doubt that these orders of the President, and the action of our army and navy commander in California, in conformity with them, was according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace.

In reference to the duties collected after the cession of California, the following language is used (pp. 191 *et seq.*):

But after the ratification of the treaty, California became a part of the United States, or a ceded conquered territory. Our inquiry here is to be whether or not the cession gave any right to the plaintiffs to have the duties restored to them, which they may have paid between the ratifications and exchange of the treaty and the notifications of that fact by our Government to the military governor of California. It was not received by him until two months after the ratification, and not then with any instructions or even remote intimation from the President that the civil and military government, which had been instituted during the war, was discontinued. Up to that time, whether such an intimation had or had not been given, duties had been collected under the war tariff, strictly in conformity with the instructions which had been received from Washington.

* * * * * * *

That treaty gave them no right to carry foreign goods there (that is, into California) upon which duties had not been paid in one of our ports of entry. The best test of the correctness of what has just been said is this: That if such goods had been landed there duty free, they could not have been shipped to any other port in the United States without being liable to pay duty.

* * * * * * *

The territory had been ceded as a conquest, and was to be preserved and governed as such until the sovereignty to which it had passed had legislated for it. That sovereignty was the United States, under the Constitution, by which power had been given to Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, with the power also to admit new States into this Union, with only such limitations as are expressed in the section in which this power is given. The government, of which Colonel Mason was the executive, had its origin in the lawful exercise of a belligerent right over a conquered territory. It had been instituted during the war by the command of the President of the United States. It was the government when the territory was ceded as a conquest, and it did not cease, as a matter of course, or as a necessary consequence of the restoration of peace. *The President might have dissolved it by withdrawing the army and navy officers who administered it, but he did not do so. Congress could have put an end to it, but that was not done. The right inference from the inaction of both is that it was meant to be continued until it had been legislatively changed.* No presumption of a contrary intention can be made. Whatever may have been the causes of delay, it must be presumed that the delay was consistent with the true policy of the Government. And the more so, as it was continued until the people of the Territory met in convention to form

a State government, which was subsequently recognized by Congress, under its power to admit new States into the Union.

* * * * * * *

Our conclusion from what has been said is that the civil government of California, organized as it was from a right of conquest, did not cease or become defunct in consequence of the signature of the treaty or from its ratification. *We think it was continued over a ceded conquest, without any violation of the Constitution or laws of the United States, and that until Congress legislated for it* the duties upon foreign goods imported into San Francisco were legally demanded and lawfully received by Mr. Harrison, the collector of the port, who received his appointment, according to instructions from Washington, from Governor Mason.

After again asserting "the belligerent right of the United States to make a civil government in California," and that "collection districts and ports of entry are no more than designated localities within and at which Congress has extended a liberty of commerce in the United States, and that so much of its territory as was not within any collection district must be considered as having been withheld from that liberty," it is said (p. 197):

Upon this principle the plaintiffs had no right of trade with California with foreign goods, excepting from the permission given by the United States under the civil government and war tariff which had been established there. And when the country was ceded as a conquest, by a treaty of peace, no larger liberty to trade resulted. By the ratifications of the treaty, California became a part of the United States. And, as there is nothing differently stipulated in the treaty with respect to commerce, it became instantly bound and privileged, by the laws which Congress had passed, to raise a revenue from duties on imports and tonnage.

The latter paragraph of Mr. Justice Wayne's opinion is relied on as sustaining the appellants' contention in the present case, that no duty can be lawfully assessed on these importations made from Porto Rico since the ratification of the treaty of peace with Spain; and, also, the following (p. 198):

Indeed, it must be very clear that no such right exists, and that there was nothing in the condition of California to exempt importers of foreign goods into it from the payment of the same duties which were chargeable in the other ports of the United States.

* * * * * * *

The ratifications of the treaty made California a part of the United States, and that as soon as it became so the territory became subject to the acts which were in force to regulate foreign commerce with the United States, after those had ceased which had been instituted for its regulation as a belligerent right.

These views must be interpreted in the light of the fact that *the tariff act of 1846 was put in operation by the military governor of California, with the authority of the President.* There is no decision, therefore, that this act was operative *ex proprio vigore*, on the mere cession of California to the United States under the provisions of the treaty of peace. The contrary would appear from the last part of Mr. Justice Wayne's opinion, which reviews the history of tariff legislation in reference to the cases of Louisiana, Florida, and the other territory

acquired by treaty, from which it appears that these territories were "not considered, *in a fiscal sense*, as a part of the United States," and that goods brought from there were held dutiable until Congress had by special legislation extended our revenue system over them by establishing ports of entry and the President had appointed collectors of customs to execute these laws. The last two headnotes of the case, presumably prepared with the approbation of the court, read as follows:

The formation of the civil government in California, when it was done was the lawful exercise of a belligerent right over a conquered territory. It was the existing government when the territory was ceded to the United States, as a conquest, and did not cease as a matter of course, or as a consequence of the restoration of peace; and it was rightfully continued after peace was made with Mexico, until Congress legislated otherwise, under its constitutional power, to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The tonnage duties, and duties upon foreign goods imported into San Francisco, were legally demanded and lawfully collected by the civil governor, whilst the war continued, and afterwards, from the ratification of the treaty of peace until the revenue system of the United States was put into practical operation in California, under the acts of Congress passed for that purpose.

We have discussed this case of Cross *v.* Harrison more at length because it is relied on in this case as an authority in support of the contentions both of the Government and of the importers, and contains the most elaborate discussion of the questions at issue of any reported decision of the Supreme Court.

Our conclusion is that while Porto Rico was unquestionably a part of the United States in the sense that it was owned by this Government and was completely under its *sovereignty*, yet inasmuch as it had not been brought under the *domain* of the nation by special legislative action of Congress, that it was foreign to the United States for fiscal or tariff purposes.

A question somewhat different would be presented had Congress undertaken to exercise its constitutional right to pass laws for the government of this newly acquired territory, and had passed a tariff act extending over the island, with rates of duty different from those imposed by the general tariff laws applicable to other parts of the country. The Constitution (article I, section 8) provides that "all duties, imposts and excises shall be uniform throughout the United States." Whether, in such case, Porto Rico would fall within the provisions of this clause of the Constitution, as being a part of the United States, does not arise in this case, and we decline for this reason to express any opinion on the subject.

We can find no instance in which territory has ever been acquired by the United States by conquest, treaty, or purchase where Congress has not seen fit by special legislation to extend tariff, navigation, and other laws of the United States to the territory thus acquired. This seems to be true from the time of the adoption of the Constitution by North Carolina and Rhode Island, and the admission of those States into the Union in 1790 (1 Stat., 178), down to the recent acquisition of Hawaii (30 Stat., 750). The same course was pursued in reference to Louisiana, Florida, Texas, and Alaska. We can perceive no difference

in the principle which would govern the case of goods imported from the United States into Porto Rico, and that of merchandise coming from Porto Rico into the United States.

The political status of Porto Rico, its relations toward this country, and the necessity for congressional legislation to supersede the military government by a civil one, and to extend our tariff and other laws over the island, are subjects discussed in the recent message of the President to the Fifty-sixth Congress, first session, on December 5, 1899, from which we make the following extract:

The evacuation of Porto Rico having already been accomplished on the 18th of October, 1898, nothing remained necessary then but to continue the provisional military control of the island until Congress should enact a suitable government for the ceded territory.

The President, in the same message, urges upon Congress the adoption of a temporary form of civil government for the island, including the establishment of Federal courts and Federal jurisdiction, and adds:

Besides the administration of justice, there are the subjects of the public lands; the control and improvement of rivers and harbors; the control of the waters or streams not navigable, which under the Spanish law belonged to the Crown of Spain, and have by the treaty of cession passed to the United States; the immigration of people from foreign countries; the importation of contract labor; the imposition and collection of internal revenue; the application of the navigation laws; the regulation of the current money; the establishment of post-offices and post-roads; *the regulation of tariff rates on merchandise imported from the island into the United States; the establishment of ports of entry and delivery;* the regulation of patents and copyrights; these, with various other subjects which rest entirely within the power of Congress, call for careful consideration and immediate action.

The attention of Congress is further called to the fact that our tariffs have been continued in force against products of the island as when it was under Spanish sovereignty; and the Executive recommends the abolition by Congress of all customs tariffs between the United States and Porto Rico, and that the existing government of the island, maintained by him under the law of belligerent right, be "superseded by an administration entirely civil in its nature."

If the present importations had been made from some foreign country other than the United States into Porto Rico, duties would unquestionably have been lawfully exacted under the provisions of the war tariff prescribed for that island by the President in his capacity of commander-in-chief. Whatever these duties may have been, the President, in the exercise of his military authority, it may be added, had just as much power to break down tariff walls in the conquered territory and admit every imported article free of duty as he had to prescribe duties levied by the war tariff. The power to fix the rates would necessarily involve that of fixing no duties at all. Had he done this, could it have been successfully contended that all of such goods carried to Porto Rico from foreign countries and admitted there free of duty could be brought thence into the United States without paying any duties at all, on the ground that they came from a part of the United States? This seems to us to be a strong argument in support of the conclusion reached by the Supreme Court in the two cases to which we have above referred,

and of the interpretation we have placed on those decisions. Any other view of the law would authorize the President to admit goods into this country indirectly through Porto Rico, or other like conquered territory, exempt from any duty imposed by the provisions of existing tariff laws duly enacted by Congress.

Whatever may be said as to international relations, in our judgment Porto Rico had not, at the time of these importations, become for *tariff purposes* a part of the "United States," within the meaning of article II, section 8, of the Federal Constitution, which provides that all duties "shall be uniform throughout the United *States*." No question, we repeat, can arise as to the want of uniformity in the rates of duty levied by Congress, until that body shall undertake to extend the tariff laws to the newly acquired territory, and, by appropriate legislation, levy rates of duty on goods imported into such territory, different from those levied on merchandise coming from foreign countries into the United States, or shall levy duties on goods imported from that island into one of the established collection districts of the United States. The necessary inference from the foregoing decisions is that this provision of the Constitution does not extend *ex proprio vigore* to this island in its present political status.

The protests are accordingly overruled and the collector's decision affirmed in each case.

(S'd) H. M. SOMERVILLE,
GEO. C. TICHENOR,
I. F. FISCHER,
Board of Classification of U. S. General Appraisers.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said board than such as are shown by said decision and other exhibits hereto attached.

H. M. SOMERVILLE,
GEO. C. TICHENOR,
I. F. FISCHER,
Board of U. S. General Appraisers.

(Endorsed:) No. 3076. U. S. circuit court, southern district of New York. In the matter of the application of J. H. Goetze & Co. for a review of the decision of the board of U. S. general appraisers as to the rate and amount of duty on certain imported merchandise. Return of the board of U. S. general appraisers. U. S. circuit court. Filed Mar. 15, 1900. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

JOHN H. GOETZE & Co. *vs.* THE UNITED STATES. } No. 3076.

Appeal by the importers from a decision of the board of general appraisers which sustained the assessment of duty by the collector upon the merchandise in question.

TOWNSEND, *District Judge:*

On June 6, 1899, John H. Goetze & Co. imported from Porto Rico into the port of New York one hundred bales of leaf or filler tobacco,

upon which duty was assessed at thirty-five cents per pound as "filler tobacco not specially provided for," pursuant to the provisions of paragraph 213 of the tariff act of July 24, 1897, commonly known as the Dingley act. The importer protested, claiming that the merchandise was not subject to duty, because Porto Rico was not a foreign country, and because, therefore, the "imposition of duties on goods brought from a place within the territory of the United States into a port of the United States is not lawful and valid under the Constitution." There is no dispute as to the classification of the tobacco or as to the rate of duty, provided the imposition is lawful.

A preliminary question of jurisdiction has been disposed of in the suit of Lascelles *vs.* Bradwell recently brought to enjoin the collector from collecting the duties. Judge Lacombe denied the motion of the complainants therein for an injunction on the ground that they "have an adequate, summary, and expeditious remedy at law under the customs administrative act."

The tariff act of July 24, 1897, provides "that on and after the passage of this act, unless otherwise specially provided for in this act, there shall be levied, collected, and paid upon all articles imported from foreign countries and mentioned in the schedules herein contained the rates of duty which are by the schedules and paragraphs respectively prescribed." (30 Stat. at Large, 151.) The Constitution provides that "all duties, imposts, and excises shall be uniform throughout the United States." (Art. I, sec. 8.)

Before the war with Spain Porto Rico was a foreign country. It did not cease to be a foreign country when it was occupied by the military forces of the United States. Its status at that time is settled by the decision of the Supreme Court in Fleming *vs.* Page, 9 How., 603. The port of Tampico had been wrested from Mexico and was held by the United States until the final treaty of peace. During that time duties on goods imported from that port were protested on the ground that Tampico was part of the United States. Chief Justice Taney, in writing the decision to the effect that Tampico was a foreign country, says:

> "The country was in the exclusive and firm possession of the United States and governed by its military authorities, acting under the orders of the President, but it does not follow that it was a part of the United States or that it had ceased to be a foreign country in the sense in which these words are used in the acts of Congress. * * * By the laws and usages of nations conquest is a valid title, while the victor maintains the exclusive possession of the conquered country. The citizens of no other nation, therefore, had a right to enter it without the permission of the American authorities nor to hold intercourse with its inhabitants nor to trade with them. As regarded all other nations, it was a part of the United States and belonged to them as exclusively as the territory included in our established boundaries, but yet it was not a part of this Union."

The conquest of Porto Rico under authority of the Executive made it ours by military title, but the President's "conquests do not enlarge the boundaries of this Union nor extend the operation of our institutions and laws beyond the limits before assigned to them by the legislative power." Our boundaries could not "be regulated by the

varying incidents of war and be enlarged or diminished as the armies on either side advanced or retreated." (Fleming *vs.* Page, *supra.*) In this sense, therefore, our constitutional boundaries do not "follow the flag." An extension of the boundaries of the United States can be made "only by the treaty-making power or the legislative authority and is not a part of the power conferred upon the President by the declaration of war" (*ibid*).

The conquest of Porto Rico did not incorporate the island within the United States. Did the treaty of cession accomplish that result?

What action on the part of the treaty-making power is essential in order to effect a complete incorporation of new territory and whether this result can be accomplished at all without supplementary legislation is by no means settled. In the treaty of cession of Louisiana it was provided that "the inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States" (art III). Whether this provision brought the new territory within our boundaries is a question which has not arisen. Congress shortly after the ratification of the treaty passed acts providing for the extension of our customs and other laws over Louisiana (2 Stat. at Large, 245, 251, 283).

The treaty which ceded Florida contained an almost identical provision for the incorporation of the inhabitants of that territory.

Of this treaty Chief Justice Marshall said:

> "This treaty is the law of the land and admits the inhabitants of Florida to the enjoyment of the privileges, rights, and immunities of the citizens of the United States." (American Insurance Co. *vs.* Canter, 1 Pet., 542.)

Whether they would be admitted independently of this stipulation he refuses to discuss. Congress, however, deemed it necessary to pass special enactments in order to extend our revenue and other general laws over the new territory. (3 Stat. at Large, 637, 657.)

In the treaty of 1848 with Mexico providing for the cession of California it was stipulated that Mexicans remaining in the ceded territory who did not elect to retain their former citizenship "should be incorporated into the Union and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution." (Art. IX, treaties and conventions, 686.)

Congress within a year from the treaty of cession extended our revenue laws to California. (9 S. L., 400.) All the laws of the United States not locally inapplicable were extended by special enactment to California a few weeks after she had been admitted as a State. (9 S. L., 521.) Of this treaty Mr. Justice Wayne said: "By the ratification of this treaty California became a part of the United States." (Cross *vs.* Harrison, 16 How., 197.) But, as will be shown, it is probable that Justice Wayne was referring to the relations of California and the United States as regards other nations and not as to its internal, organic connections with the sovereign nations, so that these words cannot be taken as determining that supplementary legislation is not necessary to complete incorporation.

In the cession of Alaska it was provided that the inhabitants who remained three years, with the exception of uncivilized native tribes, "shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." (Art. III.) About a year later Congress extended our customs and navigation laws to the new territory. (15 Stats. at Large, 240.)

Thus we see that in all previous cession of territory there has been a special provision in the treaty for incorporating the inhabitants within the United States. Whether a treaty stipulation alone would be sufficient to incorporate the territory into the Union is not clearly established. The statement of Chief Justice Marshall, *supra*, would lead to the conclusion that such stipulation is sufficient to secure citizenship. Congress, however, has always deemed it necessary to put our customs laws in force by supplementary legislation.

This uniform course of treaty and legislative provisions shows that the incorporation of new territory into our body politic is not to be readily inferred from a treaty, but results only from express stipulations in or necessary implication therefrom. Before the date of this importation the island had been ceded to this country by the treaty of Paris, which went into effect on April 11, 1899. Article 2 of that treaty provided that "Spain cedes to the United States the island of Porto Rico." Article 9 provided that the "civil rights and political status of the native inhabitants of the territories hereby ceded shall be determined by the Congress." (30 Stat. at Large, 1754.)

The treaty further provided that "Spanish subjects, natives of the peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty," may declare their intention to retain their allegiance; "in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside." (Art. IX, 30 Stat. at Large, 1759.) There is no stipulation for the incorporation of the inhabitants within the Union as there has always been in prior treaties. On the contrary, their "civil rights and political status * * * shall be determined by the Congress." Spaniards who renounce their allegiance have the same status as natives. In the determination of "civil rights and political status" must be comprehended the determination of the internal relationship of the Porto Ricans to our organic law. Before cession, under conquest, Porto Rico was a part of the United States as to foreign nations. The *de facto* title to the soil was in the United States, but its inhabitants were foreigners to the Constitution, and the provision for uniformity of duties had no application there. (Fleming *vs.* Page, *supra*.) By cession the title became *de jure*, but in the status of the islanders as foreigners, and so in the status of Porto Rico as a foreign country, no change was to be made until Congress should determine its character.

The treaty vests the sovereignty over the island in the United States, but postpones changes in the relations of its people, and in its relations to the body politic, until Congress shall determine what relations shall be best suited to the conditions of its inhabitants and to the welfare of the United States. Since Congress at the time of this importation had not performed this condition of incorporation, the status of Porto Rico, except as to other nations, remains unchanged.

Counsel for the appellants, however, interpret the treaty as having effected a complete incorporation of Porto Rico with the United

States. They reject the provision which leaves the civil rights and political status of the inhabitants to be determined by Congress, as an unlawful attempt to grant to Congress certain powers over the territory after it has become incorporated in our Union, and therefore as immaterial and ineffectual for any purpose. Taking the phrase "Spain cedes Porto Rico to the United States" as making Porto Rico part of the United States under the Constitution, they contend that the provision that "the civil rights and political status of the inhabitant shall be determined by Congress" is either an attempt to grant Congress unconstitutional rights or "is merely harmless and superfluous, as it certainly is so far as political status is concerned, for it only declares what would be the law without it."

The treaty is a contract between two nations, and under familiar rules it must, if possible, be so construed as to give full force and effect to all its parts.

> "It is a rule in construing treaties as well as laws to give sensible meaning to all their provisions if that be practicable. 'The interpretation, therefore,' says Vattel, 'which would render a treaty null and inefficient cannot be admitted;' and, again, it ought to be interpreted in such a manner as that it may have its effect and not prove vain and nugatory." (De Geofroy *vs.* Riggs, 133 U. S., 258.)

The construction contended for by the appellants not only fails to give sensible meaning to all the provisions of the treaty, but does violence to the natural and ordinary meaning of its language. When one nation "cedes" territory to another it hands over the title and sovereignty, good as against all the world; but this does not necessarily determine in what way it shall be held by the new sovereign. As was said by Chief Justice Marshall in American Insurance Co. *vs.* Canter, 1 Pet., 541:

> "The usage of the world is, if a nation be not entirely subdued, to consider the holding of acquired territory as a mere military occupation until its fate shall be determined at the treaty of peace. If it be ceded by the treaty the acquisition is confirmed and the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose."

In determining the meaning to be attributed to the words "cede" and "foreign" herein, we must not confuse the principles of international and constitutional law. From the standpoint of international law, as regards other nations, Porto Rico is annexed to the Union and has become fully a part of the United States. The title to the soil is in us as exclusively as is that to any portion of this continent. Its political status is determined by the treaty. It is now a part of our dominion, undistinguishable from any other part of the United States, so far as other powers are concerned, but this international relation does not affect the status of the island from the standpoint of constitutional law. The soil became part of the United States by conquest. The treaty of cession only confirmed on the part of Spain a title already good against all the rest of the world. We have the authority of Fleming *vs.* Page that acquiring the title to soil, making it part of the United States as regards foreign nations, does not bring it within the sphere

of the Constitution. If, then, it is not acquisition of soil which extends our constitutional boundaries, what does accomplish this result? In order to extend boundaries recognized by other nations the extension of dominion by conquest is sufficient. To extend constitutional boundaries there must be some extension of organic law to the inhabitants or of institutions over the territory. The sphere of application of the Constitution is determined not by considerations of title to land, but by recognition of the status of its inhabitants. New territory is not brought under the Constitution by acquisition of the soil, otherwise Fleming *vs.* Page could not have been decided as it was. This is done either by an incorporation of the inhabitants into the Union or by an extension of our laws and institutions throughout the territory. This cannot be done by conquest, but only by legislation or treaty. (Fleming *vs.* Page.) Here the treaty recognizes and makes complete the *de facto* title gained by conquest. The island is not thus brought under the Constitution unless the treaty supplements the confirmation of title by an incorporation of the inhabitants into the Union under the Constitution or by the extension of our institutions. This the treaty fails to do. Instead of providing that Spanish residents who renounce their allegiance shall be incorporated as citizens—the uniform course pursued hitherto when it has been desired to bring new territory into the Union—the treaty stipulates that in default of a declaration of allegiance to Spain "they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside." Thus they and the native inhabitants, practically the whole people of the island, are left to find a determination of their status in congressional action. The people of Porto Rico, instead of being incorporated into the Union by the treaty, are left *in statu quo*. Nor has there been any extension of our laws or institutions to the island, but at least one of these acts, brought about either by treaty or legislation, is necessary before any change of status, before any application of the Constitution in Porto Rico. Until then the island remains, to use the language of the Supreme Court, "part of the United States, but still a foreign country."

It is strongly urged, by way of objection to effectuating the language and real intent of the treaty, that the United States has no constitutional authority to hold sovereignty over subject territory which it does not make part of itself under the Constitution. This principle is attempted to be deduced, not from any general impossibility of owning territory without incorporating it as a part of the sovereign nation, but from the peculiar limitations claimed to exist upon our own sovereignty. Other nations rule and exercise full sovereignty over lands which they in no way annex to themselves as an integral part under their organic law. If the United States is to be denied this common attribute of sovereignty, it must be admitted that the treaty of Paris is so far forth unconstitutional; but if our nation has this power in common with other nations, then the treaty is valid.

We have seen that before the treaty of Paris Porto Rico was a foreign country, and that by the treaty of Paris its political status was to remain unchanged until Congress should act. Until Congress fixes its status otherwise, Porto Rico, so far as regards our Constitution, is a foreign country. That it was so at the time of the treaty cannot be denied without running counter to the authority of the decision of the Supreme Court in Fleming *vs.* Page, *supra*. That the

treaty, if valid, left the constitutional status of the island unchanged cannot be denied without doing violence to the meaning of its express terms and adopting a construction which fails to give effect to all parts of the instrument.

The only remaining ground upon which it can be urged that Porto Rico's status has been changed is that the treaty is unconstitutional. Thus far in the history of our country no treaty has ever been adjudged invalid on this ground. A treaty is not only the law of our land, but also a contract of the United States with another nation. A court would not be justified in overruling the act of the treaty-making power unless the reasons for so doing were strong and imperative.

The sole constitutional question is this: May our Government by treaty accept the title and sovereignty over territory and at the same time preserve its status as a foreign country so far as its internal relation to us is concerned? Can we, in other words, hold sovereignty over territory without incorporating it into the United States? Counsel for appellant, in arguing that Porto Rico is a portion of this nation, rely chiefly on the case of Cross *vs.* Harrison, 16 How., 164. They claim that it was there decided "not only that territory ceded by a treaty of peace becomes a part of the nation to which it is annexed, but that it ceases to be a foreign country within the meaning of the tariff act, so that duties accrue under such an act upon goods brought into it from abroad." It is extremely doubtful whether any such doctrine can be deduced from that case. If it were to be assumed that such might be the effect of an unqualified cession this principle would not apply in testing the constitutionality of a treaty which modifies the cession and preserves the status of ceded territory as foreign. The contract between the United States and Spain in express terms qualifies what the appellants claim is the usual legal effect of cession.

The opinion in Cross *vs.* Harrison does not contain any discussion of this the only question before us. Indeed, the constitutional questions which were discussed were not involved in the decision, because the only controversy was as to the authority of the military governor, after cession, to collect the regular duties in force throughout the United States without authority from Congress, and Congress had ratified his action. This alone would have been decisive. Beyond this the only question involved in the discussion was the right of the collector under the military governor during the interregnum to levy on goods coming into the ceded territory the same duties as were enforced elsewhere in the United States.

In what sense California was a part of the United States is not made clear. Justice Wayne, indeed, said: "By the ratification of treaty California became part of the United States; and as there is nothing stipulated in the treaty with respect to commerce, it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imports and tonnage." But the suit related to the claims of foreign importers. The right claimed by them was to land goods free from duty in territory under the sovereignty of the United States, and so a part of the United States as to all foreigners. No question of the internal relation of California and the United States was raised; and it is not at all certain that these words of Justice Wayne do not mean simply that, as to foreign nations, California had become a part of the United States by perfected title, and

therefore foreigners could not violate there the law allowing them liberty to trade with the United States under specified conditions.

But even if these words of the court were intended to describe the internal relation of the new territory, they were used in reference to the treaty by which California was ceded. That treaty not only did not negatively qualify the cession, but, on the contrary, contained such phrases as these: "Territories previously belonging to Mexico and which remain for the future within the limits of the United States as defined by the present treaty" (art. VII). "In consideration of the extension acquired by the boundaries of the United States as defined in the 5th article of this treaty" (art. XII), and "considering that a great part of the territories which by the present treaty are to be comprehended for the future within the limits of the United States" (art. XI), besides the general provision for the incorporation of inhabitants as citizens already mentioned (art. IX, 9 Stats. at Large, 930).

Apparently the intent of that treaty was to include California within the United States. Whatever is said in Cross *vs.* Harrison on the relation of the ceded territory to the United States, so far as it is not merely *obiter*, serves simply to fix the effect of that and similar treaties of cession. But there is nothing in all this from which we can derive any authority to declare unconstitutional a treaty of cession which postpones the incorporation of the ceded territory as an integral part of the United States. The only phrase at all bearing on that issue is: "Inasmuch as there is nothing stipulated in the treaty with respect to commerce, it became instantly bound and privileged by existing tariff laws." This indicates that a treaty may make provisions for tariff regulations not uniform with those existing throughout the Union, thus postponing the complete annexation of the territory under the uniformity clause in the Constitution.

Cross *vs.* Harrison, therefore, upon the authority of which the appellants chiefly rely, does not bear at all upon the constitutionality of this treaty. The discussion of the constitutional question simply assumes that California had become part of the United States. The references to and interpretations of said decision in subsequent decisions of the Supreme Court show that the only point decided there was, as stated by Mr. Justice Bradley, "that the President as commander-in-chief had power to form a temporary civil government for California as a conquered territory, and to impose duties on imports and tonnage for the support of the government and for aiding to sustain the burdens of war, which were held valid until Congress saw fit to supersede them; and an action brought to recover back duties paid under such regulation was adjudged to be not maintainable." (Hamilton *vs.* Dillin, 21 Wall., 87.)

"It was held in the case of Cross *vs.* Harrison that the sovereignty of California was in the United States in virtue of the Constitution, by which power had been given to Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," to show power of Congress to govern it. (Catron, J., in Scott *vs.* Sanford, 19 How., 523.)

The other case emphasized by appellants as bearing on this point is Loughborough *vs.* Blake, 5 Wheat., 319. Reliance is placed on the following language of Chief Justice Marshall:

> "It will not be contended that the modification of the power extends to places to which the power itself does not extend. The

> power, then, to lay and collect duties, imposts and excises may be exercised, and must be exercised, throughout the United States. Does this term"—*i. e.*, the United States—"designate the whole or any portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic, which is composed of States and Territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of the Constitution, that uniformity in the imposition of imposts, duties and excises should be observed in the one than in the other. Since, then, the power to lay and collect taxes, which includes direct taxes, is obviously coextensive with the power to lay and collect duties, imposts and excises, and since the latter extends throughout the United States, it follows that the power to impose direct taxes also extends throughout the United States."

Inasmuch as the District of Columbia was carved out of States which were under the Constitution, it has been strongly urged that these statements are mere dicta. Mr. Justice Marshall's proposition is that since the power to levy taxes may and must be exercised throughout the United States, the limitation of the power must cover an equal area; but in no event could it be necessarily decisive as to whether we can hold the title to territory without making it a part of the United States.

No other decision of the Supreme Court has been cited as furnishing any authority to support the claim that this treaty is unconstitutional. The question is therefore an open one.

On the one side it is contended that the United States may hold title to territory without incorporating it fully under its organic laws; on the other, that when it accepts sovereignty the ceded territory at that instant becomes fully a part of the United States without possible qualification or limitation. If the character of the acquisition may be limited, the attempt to preserve the foreign status of the island until Congress shall determine the extent to which it is to be incorporated is constitutional. If cession *ipso facto* accomplishes an unqualified incorporation, Porto Rico is no longer foreign.

If we cannot hold ceded territory without bringing it under the Constitution as an integral part of the United States, then we cannot give to Porto Rico practical independence, a constitution and laws of her own, taxes of her own, and hold merely the sovereignty, confined perhaps to control of foreign relations. If Porto Rico is still a foreign country, we might adopt that course. The treaty, if valid, leaves such a policy open to us. If it is a part of the United States in the sense that appellants urge, we cannot grant independence unless we entirely renounce our sovereignty. For, otherwise, under their contention, the island would be under the uniformity clause of the Constitution, and we should be compelled to tax it uniformly with our own nation. Such a view of our constitutional limitations would make it impossible for us to accept from another nation a cession of territory on the condition that we should not tax it for a number of years. If cession works incorporation and its effect cannot be limited, we cannot stipulate to hold the ceded territory without imposing upon it at once the burden of our excise laws and our tariff. Can we not, in acquiring territory, provide for free trade with its former sovereign for a time?

Counsel for appellants contend that we cannot, and that such a provision would be unconstitutional. If this contention is well founded, if such territory is at once necessarily incorporated, then the stipulation in the treaty of Paris that the Philippines are to have free trade with Spain for ten years is void because in violation of the uniformity clause in the Constitution. Then the treaty which ceded Louisiana was unconstitutional, as some of its opponents urged at the time, in its attempt to limit the incorporation of that territory to the extent of admitting to its ports certain Spanish and French ships on payment of smaller tonnage duties than would be required in other ports of the United States. Here, to this extent, Louisiana was kept apart from full union with our nation, that in this respect it was not bound by the uniformity clause in the Constitution. A similar provision secured privileges for Spanish ships for twelve years in the ports of Florida when that territory was ceded, thereby granting that territory commercial advantages not in harmony with a full incorporation under the Constitution. Are we to declare these treaties unconstitutional? Are we to say that the United States as a sovereign nation, exercising full power to make war and treaties, is to be so limited that it cannot accept sovereignty without unconditional incorporation? This is what we must decide if we are to declare the treaty before us unconstitutional. If the treaties with France and Spain, sanctioned in the former by congressional resolution unquestioned in our courts and acquiesced in all these years, are valid precedents; if the treaty of Paris, giving Spain free trade with the Philippines, is constitutional, then the treaty clause in question is not unconstitutional and void, and Porto Rico is still, in its constitutional relations to us, a foreign country until Congress shall otherwise determine.

It may be argued, however, that as the treaty-making power has not stipulated as to rates of duty for the ceded territory this power is not included in the subjects left to congressional discretion; but it is difficult to conceive any general language more apt to express an intention to leave to Congress the determination of all such matters than that used in the treaty. Porto Rico was a foreign country and its inhabitants were foreigners prior to the treaty. The treaty virtually provided either that the status of the island as a foreign country should continue or that the status of its inhabitants as foreigners should continue until the essentials of a change of condition should be determined by Congress. No suggestion has been made as to how the treaty can have changed the status of the island as a foreign country when it expressly provides that the inhabitants shall retain their foreign status.

If this treaty must be so construed that the territory is incorporated into the United States while the inhabitants are denied the political status and civil rights of citizens, the treaty must be declared unconstitutional, and in that case Porto Rico remains a foreign country and the duties were properly assessed; but such a construction is not to be adopted if the language used will reasonably admit of any other interpretation. The natural and apparent meaning of the language of the treaty is that the territory is acquired, but not incorporated, and that it therefore remains foreign with respect to customs duties until further legislation. This is in accordance with the provisions of prior treaties. Therefore the uniformity clause of the Constitution does not yet apply.

It has been assumed throughout this discussion that if Porto Rico was a foreign country, in the sense that the constitutional provision

for uniform duties does not apply to it, it was a foreign country within the meaning of the tariff law. The term "foreign" is used in various senses. Thus the different States are usually held to be foreign to each other except as concerns international relations. Sister State judgments are for most purposes foreign judgments, and generally for all purposes, other than those specifically mentioned in the Constitution, our States are foreign to each other. On the same principle Porto Rico remains foreign to the United States except as provided by the treaty. As it has not yet been domesticated under the Constitution, its status continues unchanged except as to its relations with outside nations. While the term "foreign countries," as used in our tariff law, has not yet been judicially passed upon, it may fairly be presumed that if the makers of that law could have foreseen the present conditions they would have intended that the former relations of Porto Rico to the United States as regards customs duties should continue until changed by act of Congress.

The power to hold territory without incorporating it as an integral part under its organic law is an ordinary attribute of sovereignty. The independent States possessed it before the formation of the Union. This attribute of sovereignty they delegated to the Federal Government in the treaty and war making powers and denied to themselves in express terms. As was said by Mr. Justice Bradley in the Legal Tender cases, 12 Wall., 554:

> "The Constitution of the United States established a Government and was a league, compact, or partnership. It was constituted by the people. It is called a Government. In the eighth section of article 1 it is declared that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or office thereof. As a government it was invested with all the attributes of sovereignty. * * *
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> "The United States is not only a government, but it is a national government and the only government in this country that has the character of nationality. It is invested with power over all the foreign relations of the country—war, peace, and negotiations and intercourse with other nations—all which are forbidden to the State governments. * * *
>
> "Such being the character of the General Government, it seems to be a self-evident proposition that it is invested with all those inherent and implied powers which at the time of adopting the Constitution were generally considered to belong to every government as such and as being essential to the exercise of its functions. If this proposition be not true, it certainly is true that the Government of the United States has express authority in the clause last quoted to make all such laws (usually regarded as inherent and implied) as may be necessary and proper for carrying on the Government as constituted and vindicating its authority and existence."

And again, in Mormon Church *v.* U. S., 136 U. S., 42:

> "The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty. The territory of Louisiana, when acquired from France, and the terri-

> tories west of the Rocky mountains, when acquired from Mexico, became the absolute property and domain of the United States, subject to such conditions as the Government in its diplomatic negotiations had seen fit to accept relating to the rights of the people then inhabiting those territories."

The power exercised in this treaty, then, as an ordinary attribute of sovereignty was granted by the States to the nation, which was to represent them as independent in foreign affairs.

Opposed to this view is the contention that while the power to hold subject territory is an attribute of most sovereigns, it is not one of a republic. This argument is not drawn from a historic discussion of the question of the exercise of such power by republics (a ground from which it might perhaps be answered), but on the general principle that a government based upon the consent of the governed has the right to govern citizens, but no right to rule subjects; that the very purpose of such a government is to secure political and civil liberty, not to deny it. Conceding the full force of this contention, does it bear on the question? Even if we grant that our republic must insure throughout all territory under its dominion a republican form of government, does this prevent our holding territory without incorporating it into the United States?

Cannot such territory, which is not given the political status of membership in our Union, be governed on purely republican principles? Could not its inhabitants have the same civil and political rights as those of the existing Territories? It is answered that there would be no guaranty of these rights if this territory is not annexed to the United States under the Constitution. But, even if the express guaranties did not apply, would those rights be of necessity entirely unprotected? The argument starts from the position that a republic cannot be allowed to govern without any restraint. In this very principle we may find the safeguard of such territory. If the United States tried to govern any territory in violation of the spirit pervading republican institutions, such action might be held illegal by courts on the basis of this principle. It may be admitted that the constitutional guaranties of civil rights would apply to territory under the sovereignty but not a part of the United States. Certain civil rights, which we believe belong to every one, are crystallized into the negative provisions of our Constitution in order to prevent any wrongful and improper use of our power, and these may well be held to control our power wherever it reaches. These considerations may be found to limit us in governing any territory. Whether they do or not, it is not necessary here to decide. If they do it, it will be because we cannot violate the principles of government imbedded in our institutions; not because Porto Rico is a part of the American nation; it will be for the reason thus stated by Mr. Justice Bradley in Mormon Church *vs.* U. S., *supra*.

> "Doubtless Congress in legislating for the Territories would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments; but these limitations would exist rather by inference and the general spirit of the Constitution, from which Congress derives all its powers, than by any express and direct application of provisions."

The treaty cannot be considered unconstitutional, therefore, on the ground that we have no right to govern territory without any restraint, and perhaps cannot violate anywhere the negative provisions of the Constitution against infringement upon ordinary civil rights. If the treaty-making power acquires territory and Congress wishes to hold and govern it in accord with constitutional principles, yet without bringing it into membership in the Union and without subjecting it to our national taxation, there seems no valid constitutional reason why this cannot be done. It may be best for us not to make its citizens fully our citizens; it may be more just towards it not to subject it to paying its share of taxation. In the case of Porto Rico, with her tobacco and rum industries, such share would probably be out of all proportion to that paid by other districts. Unless we tax her for national purposes, there is no just claim on her part for the protection of the constitutional provision for uniform taxation. If we consider it for our and her best interest to keep her apart from the land which must bear the burden of taxation, why should we not have the power to do so? It may be the only just course to pursue. Thus wisest statesmanship and highest consideration for the rights of people under our charge may influence us to refrain from making ceded territory part of our nation. Twice before in our history have we found it necessary to qualify and postpone complete incorporation into the Union. It would be a narrow construction of the Constitution which in such a case would find in some "underlying principles" a veto upon an attempt to act for the highest interest of our nation and the people entrusted to its care.

The question to be decided is not what is expedient; not what the people of the United States may desire; not what is the duty of Congress; not a matter of individual preference. It is a question purely of constitutional law.

That we have the power to govern without the obligation of uniform taxation may be an unfamiliar proposition, but it is so because we have never before had occasion to use the power to the same extent. The Constitution makers may not have thought of it; yet, as we have seen, it is an incident of full sovereignty commonly exercised at the time the Union was formed; one which is now prohibited to the States, and so must have passed to the Federal Government with the power to make war and treaties, to which it is incident; for the framers of the Constitution intended that instrument not as a limitation upon the freedom of the new sovereign in acting for the States in foreign affairs; not as a check to growth, but as the organic law of a nation that can live and grow. To deny this power to govern territory at arms' length would be to thwart that intention to make the United States an unfettered sovereign in foreign affairs; for if we wage war successfully we must some time become, as many think we are now, charged with territory which it would be the greatest folly to incorporate at once into our Union, making our laws its laws, its citizens our citizens, our taxes its taxes, and which, on the other hand, international considerations and the sense of our responsibility to its inhabitants may forbid us to abandon. The construction of the Constitution which would limit our sovereign power would force us into a dilemma between violating our duty to other nations and to the people under our care on the one hand, and violating our duty to ourselves on the other. That construction would in such case imperil the hon-

orable existence of our Republic. It could not have been intended by those who framed our Constitution that we should be born a cripple among the nations.

There has been found, then, no reason, either on principle or authority, why the United States should not accept sovereignty over territory without admitting it as an integral part of the Union or making it bear the burden of the taxation uniform throughout our nation. To deny this power is to deny to this nation an important attribute of sovereignty. The intent of the Constitution is to make the Federal Government a full sovereign, with powers equal to those of other nations in its dealings for the States in foreign affairs. If the United States has this power, and we have found no reason to deny it, the treaty of Paris is constitutional. It is unnecessary to determine what limitations may control us in governing such territory. It is sufficient that we have the power to govern it without subjecting it to the burden of our national taxation. There is, then, no ground for declaring unconstitutional the treaty of cession, which accepts sovereignty on the condition that the status of the ceded territory as foreign country shall be preserved as it was until Congress shall determine it. The treaty of Paris, then, is valid. It left the political status of the inhabitants of Porto Rico unchanged. Their status at the time of cession was, as declared by the Supreme Court, that of inhabitants of a foreign country as regards the Constitution of the United States and within the meaning of the tariff acts. The treaty of cession did not change that status, and as Congress had not acted at the time of this importation, Porto Rico was still a foreign country in the sense of the tariff law, and duties were lawfully assessed on the articles imported therefrom.

The decision of the board of general appraisers is affirmed.

(Endorsed:) No. 3076. United States circuit court, southern district of New York. John H. Goetze & Co. *vs.* The United States. Opinion. Townsend, J. U. S. circuit court. Filed Jun- 14, 1900. John A. Shields, clerk.

At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the 19th day of June, in the year of our Lord one thousand nine hundred.

Present: The Hon. William K. Townsend, judge.

JOHN H. GOETZE & Co.
vs.
UNITED STATES.
} "A." Suit No. 3076.

The above cause coming on for hearing and determination before this court on the application of John H. Goetze & Co., importers, for a review of the questions of law and fact involved in the decisions of the board of U. S. general appraisers herein, and on the return of the board of general appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decision thereon:

Now, after hearing Henry C. Platt, assistant U. S. attorney, on

behalf of the collector, for affirmance, and Comstock & Brown, Esqs., counsel for the said importers, for reversal, on motion of Henry L. Burnett, U. S. attorney—

It is ordered, adjudged, and decreed that there was no error in said proceedings before said board of general appraisers, and that their decisions herein be, and the same are hereby, in all things affirmed.

WM. K. TOWNSEND,
U. S. Judge.

Assented to.

COMSTOCK & BROWN,
Attorneys for Importers.

(Endorsed:) "A." Suit No. 3076. U. S. circuit court, southern district of New York. John H. Goetze & Co. *vs.* United States. Judgment of affirmance. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Jun- 19, 1900. John A. Shields, clerk.

Circuit Court of the United States, Southern District of New York.

JOHN H. GOETZE, Doing Business under the Firm Name and Style of John H. Goetze & Co., Appellants,
versus
THE UNITED STATES, Respondent.

Afterwards, to wit, on the 22nd day of June, 1900, comes John H. Goetze, doing business under the firm name and style of John H. Goetze & Co., by Comstock & Brown, his solicitors, and says that in the record, proceedings, and decision in the above-entitled cause there is manifest error in this, to wit:

I. In that the court ordered, adjudged, and decreed that the decision of the board of United States general appraisers herein should be affirmed.

II. In that the court held that the merchandise in question was subject to duty under the tariff act of July 24, 1897.

III. In that the court held that the merchandise in question was imported from a foreign country.

IV. In that the court did not hold that this appellant was entitled to bring the said merchandise into the port of New York without the payment of any duty thereon.

V. In that the court held that the island of Porto Rico did not, by virtue of the treaty of Paris and upon its becoming operative, become a part of the United States.

VI. In that the court, having held that the tariff act of 1897 imposed a duty on articles brought into the port of New York under the circumstances appearing in this case, did not thereupon hold that in so far as the imposition of such duty was concerned the said act was invalid and inoperative as being in conflict with the Constitution of the United States.

VII. In that the court held that the ninth article of the treaty of Paris, whereby it was declared that the civil rights and political status of the native inhabitants of the territories thereby ceded to the United States should be determined by Congress, was to be construed to the effect that the Constitution of the United States, notwithstanding such cession and the transfer of sovereignty over the said island to the United States, remained inoperative therein and in regard thereto.

VIII. In that the court, having so held as is recited in the last foregoing assignment of error, did not thereupon hold that the aforesaid provision of the said treaty was invalid and inoperative as being in conflict with the Constitution of the United States.

IX. In that the court did not hold that under the Constitution of the United States, and particularly the eighth section of the first article thereof, whereby it is provided that all duties, imposts, and excises shall be uniform throughout the United States, the exaction of the duties or charges imposed upon the merchandise in question was unlawful, and that the appellant was entitled to bring the said goods into the port of New York free of such or any duties or charges.

X. In that the said court did not order, adjudge, and decree that the decision of the United States board of general appraisers herein should be in all things reversed.

Dated New York, June 22nd, 1900.

COMSTOCK & BROWN,
Solicitors for Appellant, 56 Pine Street, New York City, N. Y.
EDWARD C. PERKINS,
EVERIT BROWN,
Of Counsel with Appellant.

(Endorsed:) No. 3076. United States circuit court, southern district of New York. John H. Goetze, doing business under the firm name and style of John H. Goetze & Co., appellants, *vs.* The United States, appellee. Assignment of errors. Comstock & Brown, sol'rs for appellant, 56 Pine St., New York city. A copy of the within paper has been this day received at this office. Jun- 26, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Jun- 25, 1900. John A. Shields, clerk.

Know all men by these presents that I, John F. Strauss, am held and firmly bound unto The United States of America in the sum of one hundred dollars, to be paid to The United States of America; for the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with my seal and dated the 21st day of June, in the year of our Lord one thousand and nine hundred.

Whereas John H. Goetze & Co. have appealed to the Supreme Court of the United States from the decision of the U. S. circuit court for the southern district of New York herein as to the questions of law and fact involved in certain decisions of the board of United States general appraisers:

Now, therefore, the condition of this obligation is such that if the above-named John H. Goetze & Co. shall prosecute said proceedings with effect and pay all damages and costs which shall be awarded against them therein if they shall fail to make said proceedings good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

JOHN F. STRAUSS. [SEAL.]

Sealed and delivered and taken and acknowledged this 21st day of June, 1900, before me—

[SEAL.] TYRONE BOYD,
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

John F. Strauss, being duly sworn, deposes and says that he resides in the southern district of New York, in the city of New York, and that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

JOHN F. STRAUSS.

Sworn to before me this 21st day of June, 1900.

[SEAL.] TYRONE BOYD,
Notary Public.

This bond approved as to form and amount and sufficiency of surety. Dated New York, June 22, 1900.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) No. 3076. United States circuit court, southern district of New York. John H. Goetze & Co., appellants, *vs.* The United States, appellee. Bond. Comstock & Brown, attorneys for appellants, 56 Pine street, New York city. U. S. circuit court. Filed Jun-25, 1900. John A. Shields, clerk.

United States Circuit Court, Southern District of New York.

JOHN H. GOETZE, Doing Business under the Firm Name and Style of John H. Goetze & Co., Appellant,
versus
THE UNITED STATES, Respondent.

The above-named John H. Goetze, conceiving himself aggrieved by the decision entered in this court on the 19th day of June, 1900, in the above-entitled proceeding, and the constitutionality of a law of the United States, and the construction and application of the Constitution of the United States, as well as also the validity and the construction of a treaty made under the authority of the United States, being involved and drawn into question in the said decision, the said John H. Goetze doth hereby appeal from the said decision to the Supreme Court of the United States pursuant to the statute in such cases made and provided, and prays that his said appeal may be allowed and that a transcript of the record and proceedings and papers upon which the said decision was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated New York, June 22nd, 1900.

COMSTOCK & BROWN,
Solicitors for Appellant, 56 Pine Street, New York, N. Y.

Inasmuch as the questions involved herein are in my opinion of such importance as to require the review of the decision rendered herein and described in the foregoing petition of appeal, and inasmuch as this cause involves the construction and application of the Constitution of the United States and the constitutionality of a law of the United States and the validity and construction of a treaty made under the authority of the United States and drawn into question therein, the

foregoing application is granted and an appeal from the said decision direct to the Supreme Court of the United States is hereby allowed as prayed for.

Dated New York, June 22nd, 1900.

E. H. LACOMBE, *U. S. C. J.*

(Endorsed:) No. 3076. United States circuit court, southern district of New York. John H. Goetze, doing business under the firm name and style of John H. Goetze & Co., appellant, *vs.* The United States, appellee. Petition of appeal and allowance thereof. Comstock & Brown, sol'rs for appellant, 56 Pine St., New York, N. Y. A copy of the within paper has been this day received at this office. Jun. 26, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Jun. 26, 1900. John A. Shields, clerk.

By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on th[illegible]h day of July, one thousand nine hundred, pursuant to an appeal filed the clerk's office of the circuit court of the United States for the southern district of New York, wherein John H. Goetze is appellant and The United States of America is respondent, to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand, at the borough of Manhattan and city of New York, in the district and circuit above named, this 22nd day of June, in the year of our Lord one thousand nine hundred, and of the Independence of these United States the one hundred and twenty-fourth.

E. HENRY LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[Endorsed:] No. 3076. United States Supreme Court. E. & A. B. 1792. John H. Goetze, appellant, *vs.* The United States, appellee. Citation on appeal. Comstock & Brown, sol'rs for appellant, 56 Pine street, New York city. A copy of the within paper has been this day received at this office. Jun. 26, 1900. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Jun. 26, 1900. John A. Shields, clerk.

SIR: Please take notice that the original of which within is a copy was this day filed and entered in the clerk's office of within-named court.

Dated New York.

Yours, etc.,
COMSTOCK & BROWN,
Attorneys for Appell., 56 Pine Street, New York City.

To Henry L. Burnett, Esq., U. S. attorney, post-office building, New York city.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to sixty-four, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause entitled John H. Goetze, doing business under the firm name and style of John H. Goetze & Co., appellants, against the United States, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 30th day of June, in the year of our Lord one thousand nine hundred, and of the Independence of the said United States the one hundred and twenty-fourth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JNO. A. SHIELDS, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled June 30, 1900.]

[Endorsed:] United States Supreme Court. John H. Goetze & Co., applicants *vs.* United States, appellee. Transcript of record from the circuit court of the United States for the southern district of New York.

Endorsed on cover: File No. 17,825. S. New York C. C. U. S. Term No., 340. John H. Goetze, doing business under the firm name and style of John H. Goetze & Co., appellant, *vs.* The United States. Filed July 9th, 1900.